

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

February 11, 2011

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:02 p.m. in the Council Chambers, 200 East Main Street, on February 11, 2011.

Members in attendance were Chairman Louis Stout, James Griggs, Kathryn Moore, Jan Meyer, Noel White and Thomas Glover. Member Barry Stumbo was absent. Others present were Jim Hume, Division of Building Inspection; Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; Capt. Charles Bowen, Division of Fire & Emergency Services; and Rochelle Boland, Department of Law. Staff members in attendance were Bill Sallee, Barbara Rackers. Jim Marx and Wanda Howard.

- II. **APPROVAL OF MINUTES** - The Chair announced that there were no minutes of previous meetings to be considered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Transcript or Witnesses** - The agenda announced that any applicants or objectors to any appeal before the Board were entitled to have a transcript of the meeting prepared at their expense and to have witnesses sworn.

B. **Continuation of Conditional Use Appeal**

1. **C-2010-110: VULCAN CONSTRUCTION MATERIALS, LP** - appeals for a conditional use permit to conduct underground mining of limestone in the Agricultural Rural (A-R) and Neighborhood Business (B-1) zones, on properties located at 7200, 7210 and 7230 Turner Station Road (Council District 12).

The Staff Recommended: Approval of a conditional use for the southerly half of the proposed mining area, for the following reasons:

- a. An underground mining operation confined to this area should not adversely affect the subject or surrounding properties. The area to be mined is immediately adjacent to an existing underground mining and quarrying operation that has been in place for over fifty years. Property to the west and southwest of this area, consisting of several hundred acres of land, is owned and managed by the same landowner that is leasing the land to be mined to Vulcan. All aspects of the mining operation have been located and designed to satisfy concerns of Floracliff Nature Sanctuary, which is located immediately to the south of Vulcan's existing mine and over ½ mile away from the new mining area. Existing residences on the adjoining properties to the east and north will be at least 800' away, which should help to minimize the potential for disturbances from blasting.
- b. Excessive noise or dust is not anticipated, as the mining activity will be entirely underground, and reclamation of the site and drainage control will be easily accomplished since only very minor alterations will be needed on the surface of the subject property.
- c. The appellant has not had a permit revoked or bond or other security forfeited for failure to comply with any Federal, State or local mining laws, regulations or conditions.
- d. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Construction and operation of the mine shall be done in accordance with the submitted application, and a revised site plan indicating: (a) an area to be mined equivalent to roughly half of the 107 acres that was originally proposed, with the northerly limit defined by a line extending from the centerline of Grimes Mill Road (as it intersects with Old Richmond Road) in a westerly direction to a point approximately 400' south of the north end of the impoundment of Elk Lick Creek; and (b) a setback of at least 200' to be provided from the impoundment and all portions of Elk Lick Creek.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. Surface alterations shall be limited to the construction of air ventilators needed to comply with regulatory requirements, and reasonable access to those sites for construction and maintenance.
4. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
5. The facility shall at all times comply with the provisions of the Mining/Quarrying Ordinance (Code of Ordinances #252-91), as well as all Federal and State regulations pertaining to mining activities, air pollution and waste management, and surface and ground water protection.

6. Blasting shall take place, on the average, no more than once per day, and shall be designed and implemented in strict compliance with all applicable regulatory standards relating to a "scale-distance formula".
7. Upon initiation of underground mining to the north of Vulcan's property, Vulcan shall not concurrently conduct any mining on their property (7430 Elk Lick Falls Road) at a depth greater than level 2 (approximately 300'), or otherwise conduct mining at both locations to the extent that historical levels of production are exceeded.
8. All underground mining on the approved portion of the subject property shall take place at a level 2 depth of approximately 300'.

NOTE: A video recording of this public hearing is available for viewing at [www.lexingtonky.gov/City Government/Council Clerk's Office/View Meetings Online/Archived Meetings/Board of Adjustment/2011/Board of Adjustment Meeting/02-11-11/Video](http://www.lexingtonky.gov/City%20Government/Council%20Clerk's%20Office/View%20Meetings%20Online/Archived%20Meetings/Board%20of%20Adjustment/2011/Board%20of%20Adjustment%20Meeting/02-11-11/Video).

Chairman's Comments - Chairman Stout apologized for missing the first meeting on this application, and said that this was a continuation of the prior hearing for this application.

Swearing of Witnesses - Chairman Stout asked those who had not been sworn previously to stand at this time. He then administered the oath to those wishing to testify that had not been sworn at the previous meeting.

Chairman Stout said that he had educated himself on the prior meeting from last month on this application, and had read all of the exhibits submitted at the prior meeting. He said that he had viewed a video recording of the prior meeting of January 29, and felt that he was as up to date as he could possibly be about this application.

Chairman Stout reminded those in attendance that he would halt any repetitive testimony relative to this case, and asked the staff if they had any opening comments. At this time, Mr. Marx entered two additional letters received into the record.

Objectors (cont.) - Mr. Don Todd, attorney, entered a notebook of exhibits into the record, along with a sheet outlining those exhibits. He asked that the prior correspondence be entered into the record of this hearing. He also asked that a copy of the Rural Land Management Plan be distributed to Board members, and he entered a copy into the record.

Mr. Todd said that the objectors were almost 1/3 of the way through their presentation. He summarized the objections presented to the Board at the prior (January) hearing, and introduced the speakers from the last meeting (Ms. Mary Dianne Hanna, Professor Lori Lawrence, Ms. Jessica Brown, and Ms. Win Meeker) all of whom were present in opposition at this meeting as well. Mr. Todd said that the objectors will first present several legal arguments at this hearing, and encouraged questions from the Board during their actual presentations.

Ms. Wendy Trimble, 825 Walnut Hill Road, spoke in opposition to this appeal. She said that she is a mother, a cyclist and a nearby resident, and she was disturbed by the gravel truck traffic to and from the existing mine. She said that she cycles to her business, and others cycle on Old Richmond Road as well. She displayed a map of Bicycle Commuter Routes from the Lexington Metropolitan Planning Organization on the overhead projector, and entered it into the record. She said that she was Chair of the Mayor's Bicycle Task Force, and that bicycle commuters and cycle enthusiasts often use or cross Old Richmond Road. She thought that the gravel trucks do not have time to react to cyclists due to their travel speeds on US 25.

Ms. Gloria Martin, 7416 Grimes Mill Road, and former Board of Adjustment member, spoke in opposition to this appeal. She lives within the notification area for this request. She provided a history of the LFUCG Mining & Quarrying Ordinance, which was the result of a citizen's committee established by former Mayor Scotty Baesler that met regularly about 20 years ago. She said that this committee met for two years, it was not contentious, and the committee was in unanimous agreement with the Mining & Quarrying Ordinance. She said that the committee had more than a dozen members, including members of Vulcan Materials and the Crushed Stone Association. She said that there was much public involvement during this two-year time frame. Folks with expertise in geology and hydrology were also on the committee. Some other ordinances from around the nation were also reviewed by this committee.

Ms. Martin said that much had changed over the past 20 years. The people in the local government and the managers with the mine operation have changed. Board of Adjustment members also participated in the drafting of the Mining & Quarrying Ordinance. She said that many of the neighbors to this site are still the same, some of which are here as well. She said that this Ordinance had not changed over the past 20 years. She hoped that the Board members had reviewed the BOA minutes from those 1988 & 1989 hearings involving the existing Vulcan mine site.

Ms. Martin discussed some of the recommendations from the staff of the Commonwealth of Kentucky at that time, which was to dovetail this Ordinance with the Zoning Ordinance, which was done 20 years ago. She said that this was a big financial issue at the time. Ms. Martin said that the nearby properties within the notification area are assessed at nearly \$12 million. She discussed the Exhibit items at Tab 1, and said that the neighbors to this site have a big financial and legal interest in this request. She entered the property owner notification listing for this conditional use appeal into the record.

Ms. Martin said that she had a unique perspective on this application, as the former Chair of the Committee that developed the Mining & Quarrying Ordinance, as a past member of the Board of Adjustment, as an elected Councilmember for 11 years, and as a nearby resident to this location. She said that the Board could not legally approve this use, as it was not in compliance with the adopted Mining & Quarrying Ordinance, and that the applicant did not currently have a proper permit for mining at their location. The real issue is that the Mining Ordinance and the Zoning Ordinance do dovetail, and that the applicant had "more work to do."

Ms. Martin discussed the Exhibit items at Tab 4: The process for obtaining a mining permit per the Mining Ordinance. She said that there were four basic steps. First, an application had to be submitted to the Division of Building Inspection, including proof that the applicant has adequate bonding. Step two is an application to the Division of Planning for a Conditional Use Permit from the Board of Adjustment. The third step is a return trip to the Division of Building Inspection for issuance of the Permit. Finally, all of the conditions are recorded in the County Clerk's Office in the Certificate of Land Use Restriction books. She said that the staff of these two divisions is not responsible for completing all of this information; but instead, they must rely upon the items supplied by the appellant on these applications.

She then discussed the Exhibit items at Tab 3: Information from the 1988 & 1989 mining application involving the mine adjacent to the subject property. She said that in 1989, Vulcan informed the Committee that they possessed valid existing rights to conduct mining. She also said that, at the State's request, the Zoning Ordinance provides definitions for both mining and quarrying. However, the Zoning Ordinance did not have any conditions listed to guide those uses. Thus, the Mining & Quarrying Ordinance was created to level the playing field for all parties. She said that the Ordinance required the parties to file their applications, just as would be required for any new mining or quarrying operations henceforth.

Ms. Martin then discussed the Exhibit items at Tab 9 regarding mine inspections for the mine adjacent to the subject property. She said that there were several "red flags" in some of those inspection reports, over time. Almost every year, there have been inspections of the mine, and there were executive summaries provided. Section 8-7 outlines that some of the same violations occurred year after year. Other notations denoted that various rooms were "advancing toward property lines," which got the attention of the neighbors, and led, in part, to the formation of the Committee. She knew that some Notice of Violations were sent from Building Inspection to the appellant. There were some roof falls not noted; but in 2007, it was noted that the water was "forty (40)" feet deep. Later, it was noted that mining was within 50' of neighboring properties. New mine mapping must be done every year under the Mining & Quarrying Ordinance. She said that this puts Building Inspection in a bind, given that the fees were minimal to implement the Ordinance. She included a memo from her, from her time as a Council Member, to the Division of Building Inspection regarding mine inspections. Acting Building Inspection Director Curt Farley replied within a week as to who performed the inspections and at what costs. Ms. Martin then said that the inspection reports by the outside professionals all said that they did not analyze all 59 points in the Mining & Quarrying Ordinance, but rather, they would perform "spot checks" instead. She displayed a highlighted map on the overhead projector of the mining completed on the existing site, including that for Level 2, which began in the mid 1990s according to Vulcan at the past BOA meeting.

Ms. Martin entered a summary checklist into the record, which was developed for reviewing the annual inspection. Since 1994, there were some items missing from these checklists. One example was for water impoundments, which required the approval of the LFUCG Division of Engineering. She also provided a reply from the mine engineer to one of the letters from the Division of Building Inspection. It mentioned an agreement to vary the Ordinance requirements, which could not be done without a formal amendment to the Mining & Quarrying Ordinance.

Ms. Martin entered a map of the Vulcan mines around the United States, with the underground mines highlighted in green on the listing. There were very few mines operated by Vulcan, as most on the listing were (open pit) quarries.

Ms. Martin discussed several maps in the exhibits that identified the mining activity at this facility, including penetrations into the required buffer areas, near adjacent properties. Some of the highlighted information indicated that Level 1 had exceeded their property boundaries, including the Homer Turner property, and the Mary Wharton Nature Sanctuary. A total of five locations were noted. Also, several locations indicated that water was impounded more than 20' deep. The map for Level 2 indicated that the 50' buffer was placed on the map by the appellant. Much of the area (with blue cross-hatching) indicates that water was present at more than 40' in depth. She said that most reports recently showed most mining activity on Level 2 and much less on Level 1 of the mine. She said that, according to the 2009/2010 report, there are several locations where they have mined to the property line.

Ms. Martin discussed the Exhibit items at Tab 15 regarding federal citations, some of which have been issued over the past five years (2006-2010), and all of which are available online from the Federal Mine Health Safety Administration. Some of the citations are major and some are for very minor violations, such as for dust. These indicate that there have been some 59 Section 104A citations over the past five years. In the previous five years (2000-2005) there were an additional 53 MSHA citations issued for the existing mine. Over these ten years they were levied \$27,940 worth of fines. She said that the highest number of employees reported at this location had been 20 over this same period of time.

Ms. Martin concluded that, since 1991, the appellant had not followed the requirements of the adopted Mining & Quarrying

Ordinance, and they have never been to the Board of Adjustment. She thought that this was a disregard to the LFUCG. Their operation was "less than stellar" due to the number of violations. She said that they have also ignored their neighbors. Ms. Martin said that the Board should deny this request, until they are a legal and conforming operation.

Mr. William Brown, 823 McCall's Mill Road, and mining engineer, spoke in opposition. He stated that he had spent his business career in mining operations, and that he had an MBA degree. He was part of the Committee established to develop the Mining & Quarrying Ordinance. Mr. Brown stated that the Committee wanted to establish a clear set of rules by which mining companies could operate here locally. Chairman Stout asked Mr. Brown if he was within the notification area. Mr. Brown replied that he was just beyond the notification area. Chairman Stout asked if he had worked with the Neighborhood Association. Mr. Brown replied that he had not, but that he was present because he was familiar with mining operations as a part of his career.

Mr. Brown asserted that Section 8-3(3)(c), 8-3(3)(f), 8-3(4), 8-4, and 8-4(3) of the Mining & Quarrying Ordinance had been violated. He reviewed these items using a presentation on the overhead projector. He reviewed items at Tabs 5 & 11 in the Objectors' Exhibits. Mr. Brown asserted that a "reapplication" was required by Section 8-4(3) of the Ordinance; but neither a Mining Plan, a Reclamation Plan, a Reclamation Description nor a Transportation Plan was supplied. He displayed an aerial photograph of the site on the overhead projector. He said that about 70% of a 130-acre site was being quarried, at the current location, and there was no reclamation being proposed. He then displayed information about the performance bond of \$50,000 for reclamation, which is insufficient for a 70-acre site. He then displayed an update to the performance bond on the overhead projector for \$78,000. He felt that an independent engineer should evaluate the proper amount for this work. Mr. Stout asked Mr. Brown if that would be to account for the reclamation requirements. Mr. Brown concurred, and said that the bond should more closely match the liability. Chairman Stout asked if there is a Mining Plan, should there not also be a Reclamation Plan. Mr. Brown replied that while they are separate items, there does need to be a more extensive plan for the underground operation.

Mr. Brown asserted that Vulcan did not have true vested rights to mine within 1,000' of a residence under different ownership. He said that Vulcan filed their initial application more than six months after the Mining & Quarrying Ordinance was adopted in December, 1991. He displayed portions of that application on the overhead projector. He said that the 1992 Permit issued by the LFUCG did not have the supporting documents available to the neighbors for review. He also reviewed the Certificate of Occupancy issued by the Division of Building Inspection for the Vulcan site, which had conditions attached, but which was not the result of any review by the Board of Adjustment.

Mr. Brown cited Section 8-3(3)(f) of the Ordinance, which required Vulcan to reapply for their Permit, due to a sale of the property. However, that did not occur. He concluded that the appellant did not meet the timing requirement for the initial Mining & Quarrying Permit, did not seek Board of Adjustment approval of a Conditional Use Permit, did not follow the Mining Ordinance in a number of areas, did not seek a reapplication to proceed to Level 2 of their existing mine, and did not provide the required mapping. He did not believe that the proper information had been filed for the Board to approve this request.

Mr. Brown discussed Exhibit 11, regarding information from Dr. Ralph Ewers, a PhD professor from Eastern Kentucky University, who studied this area for the 1989 Board of Adjustment hearing for the Vulcan mine site. He said that these limestone structures are susceptible to karst geology and groundwater and stream-flow losses. He then considered alternatives for the appellant to not expand onto Hidden Haven farm, as he estimated they have 30+ years of mining life left at the existing location.

Mr. Brown also entered an exhibit from the Kentucky Geological Survey into the record, and circulated it to the Board, regarding three core samples of limestone rock. Mr. Glover asked Mr. Brown if this was in the Exhibit book, to which Mr. Brown replied that it was not. Chairman Stout asked Mr. Brown if they go to Level 4 or 5, which is more dangerous to the neighborhood—going deeper or wider. Mr. Brown replied that he would choose "going deeper" as that would not have quite the impact, from an environmental perspective, as "going wider."

Mr. Brown said that the pillars on Level 1 were not uniform, so that the mining on Level 2 was disconcerting to him. He said that roof falls have occurred at this location, and at Central Rock's location on Old Frankfort Pike.

Dr. Andy Roberts, 6921 Old Richmond Road, veterinarian and horse farm owner with Dr. Laurie Roberts, said that he and his wife abut the subject property on two sides with their 75-acre farm and that they also abut the nearby Nature Preserve. He spoke in opposition to this appeal. He displayed several photographs of his horse farm, and said that numerous ponds are in the area. He said that they purchased their farm in a prime, rural area of Fayette County. He said that they did not buy a farm next to a mine, and that the proposed mine would not be an agricultural use. He felt the use would be incompatible to their ability to farm their property. He felt that it was incredible that expanding the area for the mining would be more advantageous than mining deeper at their current location.

Dr. Roberts said that he was concerned about the welfare of his horses if there were sinks or other impacts from the proposed use. He said that the existing mine had a 30-year history of environmental impact to the area, and he was not confident that an expanded mining use would not continue to do so. He said that he was not opposed to mining, but was disturbed that he

could purchase rock from a supplier five miles away for \$100/load less than he could from the Vulcan facility 0.8 mile away.

Dr. Roberts displayed a map on the overhead projector of Tab 16 for the Objectors' Exhibits. He did not feel that this request made economic sense. He didn't feel that this application was compatible with the nearby Kentucky American Water Company facility nearby, the area homes, or the area farms. He said that this was not a "not in my backyard" issue, but rather, a question of "everything in its proper place." He asked the Board to support agriculture and deny this request.

Ms. Nancy Robertson, 7037 Old Richmond Road, spoke in opposition to this appeal. She said that their house had to be "lifted" in 2001 due to settling from decades of blasting from the existing mine. She reviewed the item at Tab 14 of the Objectors' Exhibits and displayed several photos of her house, including some photos of the \$4500 work and an additional \$5000 worth of new concrete work. She said that Columbia Gas had a gas line along the front of her property, and that they did not want trucks to travel over their line. She was not sure how they could approve of daily blasting either.

Mr. Jim Lerton, 7098 Turner Station Road, spoke in opposition to this appeal. He said that he shares some 576' of border with the property requested for the expanded mining operation. He reviewed items at Tab 14, and presented several photographs of his property, including one of vinyl siding on the north elevation of the home, as the stone along that wall "fell off" years ago. He submitted a timeline of his experiences with his home on the overhead projector, and a map of his property. He said that after residing on Turner Station Road for ten years, he noticed a drastic increase in the shock waves from the mine in 1987. In August of 1988, the wall failure occurred, but it was not due to water damage or deterioration or to poor construction. He said that shortly after that time, they agreed to place a seismograph in his house, at which time he noticed that the shock waves from blasting had decreased.

Mr. Lerton noted that for 20 years, there had been relative quiet, until he received a notice for this application. He noted that, just prior to his house damage, Vulcan had received State approval to increase their production from 337,000 tons per year to 800,000 tons per year—nearly a three-fold increase. He said that the Mining Ordinance requires that nearby houses, such as his, are to be identified by the applicant. He said that the Board must deny this request, as it violated mandatory requirements of the Zoning Ordinance.

Mr. John W. (Bill) McCord, Jr., 3312 Nantucket Drive, stated that he and his two daughters manage the farm at the corner of Old Richmond Road and Evans Mill Road. He spoke in opposition to this appeal, and said that he served on the Greenspace Commission for about ten years. Mr. McCord displayed a copy of Exhibit 20a from the 1980 Comprehensive Plan, depicting Environmentally Sensitive Areas. He said that the adopted Greenspace Plan reflected this information. He read a statement into the record, and reviewed items at Tab 14 of the Objectors' Exhibits.

Mr. McCord displayed a portion of a 2001 USGS Report on the overhead projector about the type of mine that is being requested at this hearing. He wanted to talk about the sinkholes on his farm, and this report said that sinkholes were possible from this type of mining activity. He displayed that of more than 4,000 sinkholes that "opened up" in Alabama, only 50 or so were due to natural causes.

Chairman Stout asked Mr. McCord about how many sinkholes were attributable to this mining operation. Mr. McCord replied that there was one. He said that the Report stated that mining and quarrying operations can produce sinkholes, usually within 600 meters (about 1/3 mile), although they could be up to one mile (1.6 km) from such a site. He noted a Kentucky Geological Survey Report also confirmed this information. He read from a portion of that study as well.

Mr. McCord then displayed several photographs of his farm, which had been in his family since 1880, and which he had resided for 86 years. Mr. McCord said that a "sink" had opened on his farm, so he contacted Vulcan and ordered a truckload of rock. The rock did not quite fill the hole, but he eventually saw grass cover that area, noting that he would not feel comfortable driving a tractor over the top of the rock.

A few years ago, Mr. McCord said that a 4' hole opened up on his property, and it expanded to about 20' deep and about a 22' diameter. He was certain that these sinks were on his farm for decades, but he and Vulcan knew what caused these depressions to open. Chairman Stout asked Mr. McCord for a clarification. Mr. McCord replied that a sink and a sinkhole were two different things.

Mr. McCord said that Elk Lick Creek runs through his farm. He said that this is a dry creek, except in the spring and during heavy summer rains. He said that it had been quite awhile since the creek had flowed through his farm, and his ponds will no longer hold water. He said that he is fortunate to have a city water line along his road frontage.

Mr. McCord urged the Board to deny this request, based upon the USGS Report information, and that serious damage can result from this activity to the site and to adjacent property. This was important, since this is an environmentally sensitive area, and had been since it was identified in the community's 1980 Comprehensive Plan.

NOTE: The Chair declared a recess at 3:25 PM. He reconvened the meeting at 3:32 PM, with the same members in attendance.

Objectors (cont.) – Dr. Charles Martin, 7416 Grimes Mill Road, a thirty-year resident, spoke in opposition. He displayed a drawing of the bedding plane and a map on the overhead projector. He said that the drawing explains how a house ½ mile from the mine could so strongly feel a vibration. He stated that, unfortunately, there were many older, historic homes in this vicinity. He said that they have had ponds go dry and sinkholes open on his farm, but he wanted to speak to truck traffic. He presented the KRS regarding trucking regulations, and said that highways are to be freely and safely used by the public. He said that the appellant is responsible for safe and legal truck operations.

Dr. Martin said that there were many regulations for truck operators, including those for “escaping” loads. The trucks must be constructed to prevent the escape of materials being trucked. Loads must be covered to avoid spillage. There are also regulations regarding designated trucking routes, and other routes are prohibited for some truck usage. The quarry is also responsible for maintaining a safe access to the state highway through their site.

Dr. Martin displayed several photographs of the site entrance to US 25, and several four-axle trucks accessing the Vulcan site. Some photos displayed damage to Elk Lick Falls Road. Some of the traffic to the adjacent asphalt plant is also hard on these pavements. Chairman Stout asked Dr. Martin whether Vulcan operates the adjacent asphalt plant. Dr. Martin responded that the asphalt plant operates on Vulcan’s property. Chairman Stout asked if the damage to the road was the result of Vulcan. Dr. Martin replied that it was due to all of the heavy truck traffic, not just Vulcan’s trucks.

Dr. Martin displayed some photos of spilled gravel on Elk Lick Falls Road. He showed several photographs of trucks accessing the Vulcan property, and of some of the county roads off US 25, which are posted to prevent truck traffic. Dr. Martin said that Grimes Mill Road, Cleveland and Elk Lick Falls Roads were all posted. He showed photos of a three-ton limit bridge over the creek. He said that a 9-mile stretch of US 25 is available for truck usage, but portions of that road are a challenge as well. That road has few shoulders and no passing lanes. He said that one can’t pass a truck on US 25.

Dr. Martin said that this is a concern because tourists use this roadway, and are directed to do so. Also, farmers use this road also, as do cyclists (bicycle and motorcycle). He displayed the Operational Plan portion of the appellant’s submission under Ordinance #252-91. He said that the truck frequency could be as much as 400 trucks per day. He thought that some checks and balances were needed here. He displayed on the overhead projector the Crash History from the Kentucky Transportation Cabinet for this portion of US 25, which showed that there were 23 crashes involving trucks from 2001-2010 in this 8-mile stretch of roadway.

Dr. Martin displayed portions of the Zoning Ordinance, including the prohibited uses in the A-R zone, and the current definitions of major and minor truck repair, as well as those for a junk yard and a vehicle storage yard.

Dr. Martin posted a map on the overhead projector of the proposed mining site, with several nearby properties highlighted. Dr. Martin submitted a poster from 1989, and submitted photos of trucks on other nearby property. Mr. Stout asked Dr. Martin if the trucks shown in the photographs were on the Vulcan site. Dr. Martin replied that, if it were not for the Vulcan mining operation, there would be no need for the trucks to be parked on the adjoining properties. These trucks are not related to any agricultural use. He showed photos of materials storage and dumping in the area, as well.

Mr. Stacy Brown, 1700 Evans Mill Road, spoke in opposition to this appeal. He said that his family’s farm abuts Hidden Haven farm. He said that he did not want to be on the road with the gravel trucks at around 3:30 each day. He submitted eight receipts from over the past three years from Boonesboro Rock Quarry in Madison County and from Catnip Hill in Nicholasville. The receipts showed that rock from those sources were less expensive than Vulcan’s rock material.

Mr. Brown submitted three aerial photographs of the area, and identified sinkhole locations in this vicinity. He said that the NCRS had surveyed the soil types in this general area. He said that he had recently had a calf fall into an 18.5’ deep sinkhole that had appeared on his farm. That hole had not been there two years earlier, as he bushogs his farm regularly. He said that the hole is 6’ to 8’ in diameter, and that it does not hold water in heavy rain conditions. This was a similar experience to that described by Mr. McCord. He worried about these features with regard to 50 years from now. Chairman Stout asked Mr. Brown if he had had his farm tested to see what caused the hole to appear. Mr. Brown replied that he had not.

Ms. Ann Graff, 1751 Hillgate Drive, spoke in opposition to this appeal, and said that she and her husband live within the notification area to this request. She presented a PowerPoint presentation regarding environmental issues and water discharge from the existing mine. It had several photographs from area springs within two miles of the mine. She said that she was concerned that Vulcan had not informed Kentucky-American Water of their expansion plans, despite their facility being only 1,000 feet from their water plant. Ms. Graff discussed Exhibits B, C, D, E & F of the Marshall-Miller report with the Board, and she had highlighted the location of the existing creek.

Ms. Graff said that she went to Frankfort, and learned from the Kentucky Division of Water’s Discharge Monitoring Report records, that from January 2005 to December 2010, there were “no flow” conditions reported for all but seven reporting periods. However, although earlier in the hearing Vulcan had explained that there were usually discharges in the late winter and early spring, no discharges were reported in 2006 through 2008.

Ms. Graff said that the Marshall-Miller Report, funded by Vulcan, found that the June 2010 discharge into Elk Lick Creek was estimated to be 1.5 gallons per second, although there had not been a significant rainfall since eleven days earlier. The State form indicated "no discharge" for that month, however (Exhibit F). She said that Vulcan is responsible to accurately report discharges into Elk Lick Creek and not to degrade the public's waters, according to the Federal Clean Water Act.

Ms. Graff said that a large sign at the entrance to the Vulcan facility indicated that it was a "Certified Wildlife Area" according to the Wildlife Habitat Council. However, when they contacted that organization, it was discovered that Vulcan had not maintained their membership for more than twelve years.

Mr. Justin Graff, 1751 Hillgate Drive, spoke in opposition to this appeal. He said that he had grown up in this area, and is a Senior at Henry Clay High School. He is interested in Biology and Environmental Science issues. He discussed three monitoring stations along Elk Lick Creek, and discussed Exhibits G, H & I of the Marshall-Miller report. He said that there is "high conductivity" in Elk Lick Creek, which means that aquatic habitat struggles in this environment. Kentucky River Watershed Watch data is very high in this area. Recent EPA studies indicate that when conductivity is high, wildlife struggles to survive. He said that Exhibit I shows that the creek migrates to the "Poor" to "Fair" category from 2005-2009, raising concern.

Mr. Thomas Yondell, 7037 Old Richmond Road, spoke in opposition to this appeal. He said that his property is near Turner Station Road. He discussed items at Tab 12 of the Objectors' Exhibits. He said that recently, the Fire Department "made a run" to Turner Station Road, where several trucks visited the site for more than three hours. He later learned that a house down the road did experience a fire, and that the house was a total loss. There were not adequate public facilities available to save the house, as there is no city water available in the area, and there are no high-pressure fire hydrants there. Mr. Yondell said that there is only one small fire truck available at the nearest fire station, and there is not adequate policing of the area either. He thought that a fire at the Vulcan mine site would be a significant safety concern.

He displayed photos of fires at other Vulcan Materials locations (in California & Arizona). Chairman Stout asked Mr. Yondell why the fire issue was of concern, since there were also no such facilities for the residents living in that area. Chairman Stout did not see the relevance of this information to this hearing.

Mr. Yondell displayed a map of fire hydrants in the area, and said that the area in question does not have adequate protection. He presented a photo of a fire at a Vulcan facility in Irwindale, California from December, 2010. He also showed a photo of a fire outside of Scottsdale, Arizona, near Mesa. That fire was in early spring, and burned for six hours. He said that the Arizona facility was similar to the Old Richmond Road facility.

He said that neighbors were concerned about facilities being moved and relocated on their property, and that Vulcan may also be interested in additional access routes into and out of the mine property.

Mr. Walter Hillenmeyer, 440 Bristol Road, submitted a letter from the Fayette County Farm Bureau, and spoke in opposition to this appeal. He felt that this would set a precedent for other non-conforming uses to expand in the future, which would defy the principles of the Rural Land Management Plan. He felt that the Board should follow the recommendations of the 2007 Comprehensive Plan, and recommended disapproval of this application.

Ms. Joan Mayer, 3300 Jones Nursery Lane, submitted a letter on behalf of the Iroquois Hunt Club to the Board, and spoke in opposition to this appeal. She said that their property was on the National Register of Historic Places. She said that Grimes Mill is located on Boone Creek, and is the last remaining stone mill in Kentucky, and is a valuable property. The Hunt Club had maintained the mill since the 1920s, and it had not been abandoned. She reviewed the history of the mill. This three-story stone building is set upon a limestone bed that is susceptible to the shock from the mining operations and blasting. She also expressed concern about St. Hubert's Episcopal Church in Clark County, just across the creek from the mill. She was concerned about the safety of the church's tower, given the blasting from the mine.

Mr. Richard Hopgood, attorney for Vulcan Construction Materials Company, asked the Board to recognize other citizen comments prior to beginning to consider rebuttal comments. Mr. Todd said he was also aware of other citizens that wished to address the Board. Chairman Stout said that he would recognize citizen comments, with a three-minute time limit each. Ms. Boland advised the Board on their procedures. Chairman Stout said that he would allow Rebuttal testimony for the appellant.

NOTE: The Chair declared a recess at 4:38 PM. He reconvened the meeting at 4:42 PM, with the same members in attendance.

Citizen Comments in Support – Mr. Dennis Anderson, Hidden Haven LLC, and owner of 7210 Turner Station Road, spoke in support of this appeal.

Objection – For the record, Mr. Todd voiced objection to Mr. Anderson's presentation since, as the property owner, he has an interest in this application. Chairman Stout noted the objection, and asked Mr. Anderson to proceed.

Mr. Anderson presented several photos of his property, and said that he had fallen in love with this farm. He had pictures of hay rides and children fishing on Hidden Haven. He said that this is the only piece of land that he owns that is not for sale. He said that he raises cattle on the farm, and that he hardly felt the blasting shocks at 4:30 each afternoon. Mr. Anderson presented photos of the house that had burned down, and ones of it after it had been rebuilt on the same foundation. He said that it was the closest house to the Vulcan mine.

Citizen Comments in Opposition (cont.) – Ms. Knox Van Nagell, Executive Director of the Fayette Alliance, submitted a letter to the Board and spoke in opposition to this appeal. She said that there were key facts in this application, and she read from portions of her letter. First, there is not a valid permit for the Vulcan mine, according to the LFUCG Mining & Quarrying Ordinance. Secondly, there had not been a reapproval of their operation since ownership changes at Vulcan, making this a non-conforming use under the Articles 4 & 7 of the Zoning Ordinance and KRS 100. Third, she said that the mining operations have damaged and disrupted neighboring properties. She urged the Board to deny this application.

Citizen Comments in Support (cont.) – Mr. Richard Murphy, attorney for Hidden Haven Farm and Dennis Anderson, spoke in support of this appeal. He asked the Board to consider the impact to other Central Kentucky cities and counties were they to disapprove this request. He said that, from a regional planning standpoint, although 90% of the gravel in this mine is used in Fayette County, other communities in this portion of the state believe that Fayette County wants them to take uses they don't want. This is a real sore point to some other nearby cities and counties, and provides a true hindrance to efforts at regional planning. He said that truck traffic issues and transport distances are going to increase in the area, if rock had to be transported from longer distances in the region.

Objection – For the record, Mr. Todd voiced objection to Mr. Murphy's presentation, as he felt that it was a closing argument. The Chair noted the objection, and instructed Mr. Murphy to proceed.

Mr. Murphy said that the Board should not say "Get your gravel someplace else," which would be the effective result if this were denied. He reminded the Board that there is a water line in front of Hidden Haven Farm. He said that Mr. Anderson is a steward of this property, and that he will continue to be so.

Citizen Comments in Support (cont.) – Mr. Warren Hoffman, attorney, spoke in support of this appeal. He said that he had not been asked to speak in support of this appeal, nor does he reside in the area. Mr. Hoffman said that he had practiced law locally for the past 27 years, and that he deals mostly with mining companies. His interest is only what's best for Lexington. He felt that this facility is in the best interest of the community. He stated his opinion that this stone is vital to maintain the infrastructure in our community. He said that keeping it where it is will allow the adverse impact of this activity to be minimized.

Mr. Hoffman said that the cost to go deeper is significantly higher than to remain on the current depth of the mine. He said that the jobs and severance tax benefits to the community are significant. He thought that Ms. Graff had notified Kentucky American Water Company's \$50 million treatment plant, and that if they were concerned, they would have appeared today "in full force." He said that if a facility like this can't be 300' underground, near an interstate, that it can hardly be allowed anywhere.

Citizen Comments in Opposition (cont.) – Mr. Wayne Mitchell, 7601 Old Richmond Road, spoke in opposition to this appeal. He said he had been a resident of this area since December 2009. He was present to attest that the blast impacts are becoming more frequent and more intense, although he didn't have a great deal of history to rely upon. He said that dust is also an issue. He said that his biggest fear is that they might choose to move their Central Rock operation to this location, and that the neighbors will have to live with those consequences.

Chairman Stout if there were any other citizens wishing to comment at this time. There was no reply from the audience.

Appellant's Rebuttal – Mr. Hopgood presented rebuttal comments for the appellant. He wished to reply to several of the stated objections. He stated that Kentucky American Water Company was on the notification list for this application, and that there had been a permanent seismograph at their facility for a number of years. This proposal will move the mining activity farther away from their facility.

Mr. Hopgood said that in the past five years, according to the Mine Safety and Health Administration and a number of other agencies at the state and local level, there were no complaints on file. He said that the objectors were successful in generating three inspections of their facility in the past few weeks. Mr. Hopgood submitted a Mine Inspection Report dated 1/25/2011 from the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet. He submitted a letter from the Division of Water for the Commonwealth of Kentucky dated January 31, 2011, and circulated it to the Board. He said that the Division of Building Inspection also had inspected the site recently.

Mr. Hopgood said that there were two paperwork items needing correction. The first was a discharge report from December 2008, where according to Vulcan's record, the report was sent to Frankfort; but according to the State offices, the last two parts of the report were missing. The report showed that Vulcan was in compliance. The second paperwork infraction

involved a May 2010 report that did not have a dual testing of the discharge that month, where the form indicated that it was twice per month.

Ms. Moore asked Mr. Hopgood about the June 1 discharge, where there had not been a rain even for eleven days prior to that discharge. She did not understand this. Mr. Jim DeCinque, Vulcan Materials, responded to the questions by saying that rainfall is not indicative of when discharges occur. They store water underground until there is a need to remove it. Ms. Moore asked if a discharge could last several days. Mr. DeCinque replied in the affirmative, and said that the duration of the discharge is not regulated, but the frequency of discharges is.

Mr. Hopgood said that another inspection had been conducted earlier that day, by the Kentucky Blasting regulatory authorities, who reviewed their blasting records, based upon a complaint by Ms. Graff. They reviewed two blasts in January 2011—on the 7th when Mr. Hopgood was on site, and on the 21st. He said that there are blasts nearly every day, usually Monday through Friday. He said that they have limits as to the allowable vibrations that they are allowed to generate from their mine.

Mr. Hopgood submitted a letter from Ms. Honaker of Columbia Gas, in rebuttal, indicating that they have reviewed the proposal and did not believe that it will have an impact. He said that they, and Kentucky-American Water Company, had no issues with the proposal.

Mr. Hopgood said that they receive about 50 MSHA violations each year, and asked Mr. DeCinque to explain what a MSHA violation entails. He said that some competitors in other parts of the state have as many as 250 violations per year. Mr. DeCinque said that earlier in the hearing, some 59 violations had been cited from over the past five years. He thought that might be accurate, as they are inspected quarterly, each for a week at a time. He said that it is not unusual for these types of violations, as they are similar to OSHA violations. Their operation is deemed “average” to just “below average” when comparison is made to similar facilities. He said that there is no such thing as a perfect inspection.

Mr. Hopgood submitted a record of Vulcan’s response to Mr. Lerton’s August 1998 complaint about their mine blasting. He said that Vulcan records complaints and responds to them. He said that Mr. Dean Durbin called Mr. Lerton following the next “shot” on August 24, and recorded Mr. Lerton’s comment on the form that it was “hardly noticeable.” He said that they have not received many recent complaints.

Mr. Hopgood submitted a copy of the Zoning Ordinance into the record at this time, as quarrying was a conditional use before mining in the Agricultural Rural, Agricultural Buffer and Agricultural Natural zones. He said that UK did not object to their recent expansion on Georgetown Road.

Mr. DeCinque said that they are required to have tarps on their trucks while loaded on the Vulcan property; but once off the site, they are private individuals acting on their own accord on public roads.

Mr. Craig Morgan, mining engineer for Vulcan Materials, provided rebuttal information regarding large truck traffic. He searched the Kentucky State Police database, which showed that only six dump trucks were involved in accidents on this road in the past 20 years.

Mr. Hopgood provided rebuttal information regarding the formulation of the Mining & Quarrying Ordinance. He said that Mr. Mac Badgett (he believed) had represented Vulcan in the creation of that Ordinance, but that he was no longer with the company. He said that that Ordinance had 59 requirements, and was detailed and lengthy. He requested that a copy of Ordinance #252-91 be entered into the record.

Mr. Hopgood submitted a copy of a permit issued under the Mining & Quarrying Ordinance, from the LFUCG Division of Building Inspection, which he entered into the record. He also submitted a copy of the “Mining/Quarrying Permit for Richmond Road Quarry” for Vulcan Materials Company (1992) from Endris Engineering. He said that anyone aggrieved by the decision of the Building Inspector can appeal that to the Board for review and a determination. That had not happened.

Mr. Griggs asked Mr. Hopgood if Vulcan needed a Conditional Use Permit to operate at their current location. Mr. Hopgood replied that they did not. They need one for the Anderson property, and that is why they were here today; but they did not for their property. Mr. Griggs asked about Ordinance #252-91 and its provisions for reapplication for a change of ownership and/or a production increase of more than 10% in a year. He felt that each reapplication requires a trip to the Board of Adjustment for those changes. Mr. Hopgood displayed Section 8-3 of the Mining & Quarrying Ordinance on the overhead projector. He said that they had been operating there since 1958, so this is a conforming use, and there is no need for a Conditional Use Permit.

Ms. Moore asked Mr. Hopgood if it was his opinion that they were not a non-conforming use because they were following the old rules. Ms. Boland replied that state statutes can’t be superseded by a local ordinance, and that a legal use at the time it commenced can not be eliminated by a land use regulation. Ms. Moore asked if the existing mine was a non-conforming use. Ms. Boland agreed that this was correct in respect to the Mining & Quarrying Ordinance, but that is not part of the Zoning

Ordinance. Mr. Hopgood entered Article 4-7 of the Zoning Ordinance into the record to answer Ms. Moore's question. He said that their existing operation can't be considered a non-conforming use.

In answering Mr. Griggs' question, Mr. Hopgood said that it was their view that a "reapplication" was not necessary for their existing mining operation. He said that only the items A through H under Section 8-3 of the Mining & Quarrying Ordinance would require a reapplication.

Mr. Hopgood displayed Section 8-4 of the Mining & Quarrying Ordinance on the overhead projector for review by the Board. He said that many of the objectors are incorrect about Vulcan's current operation, because this section states, "Prior to any mining or quarrying on a property, the owner shall submit an application for a mine permit to the Division of Building Inspection." It is their interpretation that a ruling on the conditional use must be made prior to the application under the Mining & Quarrying Ordinance. The Mining Ordinance is then a condition to a conditional use permit. He said that the Building Inspector would not issue a permit unless it had first been approved by the Board.

He said that this is exactly the procedure that was followed on Georgetown Road. Mr. Hopgood submitted a copy of the December 12, 2008 minutes from the Board of Adjustment meeting. He said that for a new or an expanded mining use, then the Board would first approve an application prior to Building Inspection approving their permit.

Mr. Glover asked if this application was for a new or an expanded use. Mr. Hopgood replied that their position is not, technically an expansion, as all the material on the Anderson property will be removed and relocated onto the Vulcan property for processing. Thus, their operations will not be changing, on the surface of the property, or in an increase in production. He said that they agreed with all the conditions recommended by the staff, with the exception of condition #7. He said that they were proposing one modification to condition #7.

Objection – For the record, Mr. Todd objected to Mr. Hopgood's rebuttal, as he felt it was instead, a closing argument. Chairman Stout asked Ms. Boland to comment. Ms. Boland quoted the Board's By-laws regarding testimony and rebuttal. Chairman Stout said that he thought Mr. Hopgood was still in rebuttal.

Mr. Hopgood displayed Section 11 "Buffer Zone" of the Mining & Quarrying Ordinance, requiring a 100' buffer area. Section 11 stated that there is to be a 100' buffer, but there is also an exception for "valid existing rights" and it was their position that they had valid existing rights at this facility, and were thus exempted from the 100' setback requirement.

Mr. Hopgood said that the Mining & Quarrying Ordinance could not undo zoning laws of the Commonwealth of Kentucky. The text of the Ordinance must be reviewed by the Planning Commission and enacted by the Council. The Mining Ordinance, on the other hand, is an exercise of the Council's police power. He made the analogy that the zoning laws tell us where "a bar" for instance, could be located, while the police power indicates how late the bar may remain open. He indicated that the Mining Ordinance was not being challenged today, but a big element of this Ordinance is also a land use ordinance, that can not affect the appellant's vested right to mine their current property.

Ms. Moore asked if it is the appellant's position that they are complying with the Mining & Quarrying Ordinance. Mr. Hopgood replied that they have proceeded under the Ordinance, because it is the law until it is changed, or until Building Inspection tells them otherwise. He said that they did not reapply because an expansion to Level 2 did not require a reapplication under that Ordinance. He said that there was no "Notice of Violation" issued by Building Inspection. Anyone can appeal a decision of the Building Inspector. He felt the objectors were asking the Board to step into the shoes of the Building Inspector and review each of the 59 elements of the Mining & Quarrying Ordinance.

Objection - For the record, Mr. Todd objected to Mr. Hopgood's rebuttal. Chairman Stout asked Mr. Hopgood to stick to rebuttal comments.

Mr. Hopgood reviewed the definition in the Ordinance of a "valid existing right" to mine material. He said that they had a deed to this property prior to December of 1999, when the Zoning Ordinance was changed. He said that a lease can also serve this purpose, and that the appellant had a lease with Mr. Homer Turner in 1996 for this property, which was subsequently purchased by Mr. Anderson, subject to the lease. Mr. Hopgood said that they have had proper state and federal permits since the time they have operated this mine.

Mr. Hopgood discussed contour information regarding the elevations on the property. He said that they conferred with Building Inspection about their contour information, and complied with their request for "spot elevations" in the mine rather than contour elevations being shown at 1' intervals, which would only result in an unreadable map.

Mr. Hopgood said that the appellant had not conducted mining off their property since the late 1980's. Mr. Hopgood discussed the "Board of Adjustment Site Plan for Conditional Use" exhibit, and said that they had agreed to a 200' buffer along Elk Lick Creek, and on the other side, which is even more than required by the Mining Ordinance. He said that in the 1980s, they were off their property in three locations, but they had not done so since.

Mr. Hopgood said that their blasting plan is based upon the closest house to their mine, and that state law sets the parameters for the timing and intensity of those blasts.

Mr. Stout asked if the blasting procedures caused a danger of sinkholes being formed and water being lost from ponds and creeks on nearby properties. Mr. Hopgood thought that Dr. Lusk should answer, noting that the state law uses the "scale-distance formula." They are not required to use seismographs, but they do as a "back-up." He said that the state law is designed so that they don't damage nearby properties.

Mr. Hopgood said that foam, not water, would likely be needed in the event of a fire on the Vulcan property, but there is a fire station in the vicinity of this property.

Mr. Stout addressed those in attendance by saying that the Board had listened to all parties. He said that the Board is sensitive to businesses and to residents in the community. He said that it is important for the Board to listen to these comments. He said that the Board understands the importance of this matter, and what had been said is important.

NOTE: The Chair declared a recess at 6:00 PM. He reconvened the meeting at 6:07 PM with the same members in attendance.

Closing Comments – Mr. Todd thanked the Board for their time reviewing this request. He said that the residents of this area have been dealing with the problems associated with this use for years. Mr. Todd said that this is really a simple case, as this request is for an expanded use on a new piece of property. He said that it is in an agricultural zone. It is their position that the past sale of the property required a new conditional use permit. He objected to the assertion of the appellant that they were not bound by the Mining & Quarrying Ordinance, adding that none of the documents requested under their open records request could be supplied for their review.

Mr. Todd said that there are numerous quarries available to this area within 25 miles of this location. The appellant's actions have led to the animosity with their neighbors and also led to animosity about the Mining & Quarrying Ordinance. He said that almost all of the neighbors have had some problems from the blasting activity. He said that the only time that folks organize like this is when they have been wronged, and that is the case here. The expansion proposed in an environmentally sensitive area is in an area where the city had spent millions of dollars as part of the Purchase of Development Rights program.

Chairman Stout thanked Mr. Todd for his comments. Mr. Todd asked the Board for equity. Chairman Stout asked for comments from the Board at this time.

Discussion – Ms. Meyer commented on the testimony by saying that she had great concerns about the proposed expansion of this operation. She said that she wasn't sure if there could be confirmation of the effects of this blasting. She understood the environmental sensitivity of the area, and the hydrology of this area. She said that she could not support additional blasting and the proposed expansion.

Mr. Glover commented on the testimony by saying that if the operation had kept seismographic records that were not in violation with state requirements, that other seismographs could have also been established and those records presented to the Board. He said that if dust on cars was routine, then photos could have been submitted showing those impacts. He had to discount that testimony for those reasons. He said that Floracliff was there 50 years ago when this operation began, and that it is still pristine today. He was not sure that there was an adverse impact from the mining use. He said that he visited the mine on January 21st and viewed the operation, and was satisfied that there was responsible operation of this facility. He agreed that this is a dirty use, but he hadn't heard any information that would cause him to vote against the request.

Mr. Griggs commented on the testimony by saying he had serious concern about the long-term structural stability of the mine. It was a significant and unnecessary threat to the Floracliff Nature Sanctuary, which required a reliable water supply. He thought that ground water and surface water was possibly being lost to the mine because there was testimony in the 1989 case of reduced flow in Elk Lick Creek, and because the Board has not been allowed access to the Level 1 area; noting that a tour is not the same as an inspection. He was also troubled by testimony of damage to adjoining properties from mine blasting, truck traffic, noise, dust and surface water & groundwater impacts. He said that the area is recognized for its rare and delicate environmental features and its location is just upstream from a 275-acre state designated nature sanctuary. He noted the unanimous neighborhood opposition to this request, and was concerned about protecting the value of this and other neighborhoods. Mr. Griggs said that he was also concerned to learn that Vulcan would participate in developing the Mining & Quarrying Ordinance, and then state today that it does not apply to them. He felt strongly that a conditional use permit should have been requested within six months of the adoption of that Ordinance in 1991.

Ms. Moore commented on the testimony by saying that she finds this decision to be difficult. She understood that no one would want to live near a quarry, but that Fayette County should take its "fair share" of these facilities. However, she noted that there were two other locations in existence in the county besides this one. She did appreciate the neighbors' concerns about this proposal. Ms. White said that she agreed with Ms. Moore's comments.

Mr. Stout commented that he had been on the Board for many years, and that he had learned a lot from other members. He

especially remembered Mr. Bagby's advice that a member must listen to people who want to live where they live. He said that he was torn between the testimony he had heard about this case. He toured the mine, and saw how the roof was being supported, and how the mine was being operated. He found it difficult to vote against this appellant, but he thought that the most important thing was the neighborhood.

Action – A motion was made by Mr. Griggs to disapprove **C-2010-110: VULCAN CONSTRUCTION MATERIALS, LP** – an appeal for a conditional use permit to conduct underground mining of limestone in the Agricultural Rural (A-R) and Neighborhood Business (B-1) zones, on properties located at 7200, 7210 and 7230 Turner Station Road, based upon the following findings of fact:

1. The request can not meet Zoning Ordinance Section 8-3(d)(9)(a) as the request has proven to be a public nuisance due to the excessive noise, truck traffic, dust, vibrations from blasting and damage to the surrounding environment.
2. The Zoning Ordinance Section 7-6(a) states proof is required that this request would not have an adverse influence on existing or future development of the subject property or its surrounding neighborhood; and since the existing quarry has already caused irreparable and permanent damage to its own property and to the property of the surrounding neighbors, it can not meet this requirement.
3. The Zoning Ordinance Section 7-6(a)(2) states that the adequate public facilities to serve this use shall be available to serve the proposed use; and since there are no fire hydrants within 1,000 feet, as stated in the Comprehensive Plan as the rural standard for this site, no EMS unit and only a single fire truck within a nine-mile radius, that requirement can not be met.
4. The Zoning Ordinance Section 7-6(a)(2) states that consideration shall be given to the adequacy of the road system, which in this case can not be met as Old Richmond Road is only a two-lane road with no shoulders and no passing lanes, and the trucking operations associated with this request are not compatible with the other cars, farm machinery and bicycles using this road.
5. The applicant has failed to demonstrate that the proposed expansion will not have an adverse impact on both the subject and surrounding properties. The requirements of the Mining & Quarrying Ordinance were adopted to impose basic conditions to ensure that such operations will not cause adverse impacts. Although this Board is not charged with the enforcing of the Ordinance, it takes note of substantial evidence of a history of violations. Such non-compliance has already created adverse impacts and further expansion of this operation can be expected to cause additional adverse influences on the surrounding properties. Specifically, failure to comply with the buffer requirements have caused adverse impacts. Also, the lack of an adequate reclamation plan as required also raises concern on long-term adverse effects on the subject property.

Ms. Meyer seconded the motion. The motion carried 5-1 (Glover opposed, Stumbo absent) to disapprove the request.

IV. **BOARD ITEMS** – There were no Board items acted upon at this time.

V. **STAFF ITEMS** – There were no Staff items heard at this time.

VI. **NEXT MEETING DATE** - The agenda announced that the Board's next meeting date would be February 25, 2011.

VII. **ADJOURNMENT** –There being no further business, the Chair declared the meeting adjourned at 6:31 PM.

Louis Stout, Chairman

James Griggs, Secretary